



OFFICE OF THE ATTORNEY GENERAL OF TEXAS

AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable W. A. Morrison
Criminal District Attorney
Cameron, Texas

Dear Sir:

Opinion No. G-3714

Re: Authority of county superintendent to refuse approval of contract between common school district and school superintendent, such refusal being petitioned by a majority of the patrons of the school.

In your letter of June 10, 1941, you submit the following facts:

Before the county superintendent approves a contract made between the trustees of a common school district and a person to serve as superintendent of the school a petition signed by eighty-one (81) residents of the school district, and constituting sixty-five (65) per cent of the patrons of the district, is presented to the county superintendent, protesting the approval of the contract, such petition reading as follows:

"We, the undersigned citizens and patrons of the Sharp School District, do respectfully request that you do not approve the contract between the Board of Trustees of the Sharp School District and A. B. Dunn for the reasons that said contract purports and attempts to employ the said A. B. Dunn as Superintendent of said school for a term of two (2) years, when the said A. B. Dunn is not a suitable person to hold the position of Superintendent and is unreasonable and overbearing on the pupils of the school and is not of a suitable disposition for the position.

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"We respectfully request that you have a hearing on this contract, giving to the undersigned the right to be heard and to present evidence upon this petition and upon the fact that the said A. B. Dunn is not eligible to hold said position and why said contract should not be approved."

You request our opinion as to whether or not the county superintendent may consider such petition and the complaints therein made in determining whether or not he will approve or reject the contract or whether the county superintendent has no discretion other than to approve the contract, even though charges of such nature are made.

Article 2750, Revised Civil Statutes, provides that the county superintendent shall approve contracts made with teachers to teach in common school districts. See also Article 2693, Revised Civil Statutes.

We believe the cases of *White v. Porter*, 78 S. W. (2d) 287, *Miller v. Smiley*, 65 S. W. (2d) 417, and *Peavy v. Carlile*, 139 S. W. (2d) 779, are distinguishable from *Vanlandingham v. Hill*, 47 S. W. (2d) 641, and *Thomas v. Taylor*, 163 S. W. 129, and that under authority of the latter two cases a county superintendent may exercise a reasonable discretion in disapproving such a contract because of personal unfitness of a teacher. Such discretion, however, may not be exercised arbitrarily and without good cause, but only upon good and sufficient grounds. Whether the causes exist in a particular case and whether they are sufficient to bring about the exercise of this discretion are questions which we cannot determine. Those questions address themselves to the sound judgment of the county superintendent. We believe our construction of the power given the county superintendent is particularly borne out by the *Thomas v. Taylor* case, supra.

APPROVED AUG 4, 1941

Yours very truly

ATTORNEY GENERAL OF TEXAS


ERNEST ASSISTANT
ATTORNEY GENERAL

By


Glenn R. Lewis
Assistant

GRL:IM